

Stephen Sorensen (SBN 199408)
Elliott McGraw (SBN 275613)
BAILEY & GLASSER, LLP
1055 Thomas Jefferson Street, NW, Suite 540
Washington, DC 20007
Phone: 202-463-2101
Email: ssorensen@baileyglasser.com
emcgraw@baileyglasser.com

Lawrence H. Heftman (*pro hac vice*)
David C. Giles (*pro hac vice*)
Michael K. Molzberger (*pro hac vice*)
ARENTFOX SCHIFF LLP
233 South Wacker Dr., Suite 7100
Chicago, IL 60606
Telephone: 312-258-5500
Email: lawrence.heftman@afslaw.com
david.giles@afslaw.com
michael.molzberger@afslaw.com

*Counsel to the Federal Deposit Insurance
Corporation as Receiver for Silicon Valley
Bank*

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

SVB FINANCIAL GROUP,

Plaintiff,

v.

FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR SILICON
VALLEY BANK AND SILICON VALLEY
BRIDGE BANK, N.A.

Defendant.

Case No.: 5:24-cv-01321-BLF

**FDIC-R1'S ADMINISTRATIVE MOTION
TO CONSIDER WHETHER CASES
SHOULD BE RELATED**

Judge: Hon. Beth Labson Freeman
Action Filed: March 5, 2024

ADMINISTRATIVE MOTION

The Federal Deposit Insurance Corporation as Receiver for Silicon Valley Bank (FDIC-R1) moves under the Civil Local Rule 7-11 for consideration that the following two actions are related:

(1) *SVB Financial Group v. Federal Deposit Insurance Corporation as Receiver for Silicon Valley Bank and Silicon Valley Bridge Bank, N.A.*, No. 5:24-cv-0132-BLF (*SVBFG v. FDIC-R*); and

(2) *Federal Deposit Insurance Corporation as Receiver for Silicon Valley Bank v. Becker et al.*, No. 5:25-cv-00568-NC (*FDIC-R v. Becker*).

Because the two actions meet the definition of related cases under Civil Local Rule 3-12, the FDIC-R1 respectfully requests that the Court order the two actions related.

I. THE TWO ACTIONS ARE RELATED

Under Civil Local Rule 3-12(a), an action is related to another when “[t]he actions concern substantially the same parties, property, transaction[,] or event,” and “[i]t appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.” Both requirements are met here.

A. The Two Actions Concern Substantially the Same Parties and Events

The two actions concern substantially the same parties and events.

The newly filed case, *FDIC-R v. Becker*, seeks recovery against former officers and directors of Silicon Valley Bank (SVB) for damages caused by their negligence, gross negligence, and breaches of fiduciary duty. SVB was closed on March 10, 2023, in what is now the third largest bank failure in United States history, and the FDIC-R1 was appointed as SVB’s receiver.

The earlier filed case, *SVBFG v. FDIC-R*, seeks recovery by SVB’s former bank holding company (SVBFG) based on balances in its deposit accounts at SVB at the time of failure. Pursuant to FDIC-R’s Answer and Affirmative Defenses (Dkt. 135), the FDIC-R1 denies any liability and further asserts that any recovery by SVBFG is precluded or fully setoff because of SVBFG’s own misconduct. That misconduct includes aiding and abetting breaches of fiduciary duty by SVB’s former officers and directors (who were simultaneously officers and directors of both SVB and SVBFG acting pursuant to joint policies and through joint committees). SVBFG also is liable for acts of SVB’s former

officers and directors as SVBFG's agents. Accordingly, there is very substantial overlap between the factual and legal predicates for the FDIC-R1's setoff and other defenses in the *SVBFG v. FDIC-R* case and for the claims alleged in the *FDIC-R v. Becker* case. Moreover, the officers and directors identified as wrongdoers in the FDIC-R1's setoff defenses in the *SVBFG v. FDIC-R* case are the same as the defendants in the *FDIC-R v. Becker* case. The FDIC-R1 also is a party to both cases.

Because the two cases involve substantial overlap among the parties and relate to the same underlying conduct, the first requirement of Civil Local Rule 3-12(a) is met.

B. There Will Be an Unduly Burdensome Duplication of Labor and Expense, or Risk of Conflicting Results, If the Cases Are Not Related

If the actions are not related, it appears likely that there will be duplication of labor and a risk of conflicting results. Judicial resolution of the two actions will require examination of substantially the same factual allegations and questions of law concerning the conduct and duties of SVB's officers and directors, in addition to discovery from numerous overlapping witnesses. Accordingly, there will be duplication of effort and numerous risks of conflicting results on important, substantially similar questions of law and fact if the cases do not proceed in front of the same Judge. The second requirement of Civil Local Rule 3-12(a) is met.

II. COMPLIANCE WITH CIVIL LOCAL RULES 3-12 AND 7-11

Pursuant to Civil Local Rule 3-12(b), a courtesy copy of this motion will be lodged with the assigned Judge in each apparently related case.

Additionally, under Civil Local Rule 7-11(a), a motion for an order for administrative relief must include, among other things, a stipulation under Civil Local Rule 7-12 or a declaration that explains why the stipulation could not be obtained. Here, the *FDIC-R v. Becker* case was recently filed and counsel for the various officer and director defendants have not yet appeared. *See* Declaration of Elliott McGraw in Support of FDIC-R1's Administrative Motion to Consider Whether Cases Should be Related.

III. ANTICIPATED CASE COORDINATION ISSUES

As the Court is aware, the *SVBFG v. FDIC-R* action was previously related to *Silicon Valley Bank Financial Group v. Federal Deposit Insurance Corporation in its Corporate Capacity (SVBFG*

1 *v. FDIC-C*), No. 5:23-cv-06543-BLF. The Court entered a Joint Discovery Stipulation on December
2 11, 2024 (Dkt. 114 in this matter) that seeks to coordinate discovery for efficiency purposes by
3 facilitating document productions across cases and attempting to ensure one deposition per witness.
4 The Court approved and ordered a substitution of new counsel for SVBFG on December 19, 2024
5 (Dkt. 124 in this matter). New counsel for SVBFG has advised that it plans to move to consolidate the
6 *SVBFG v. FDIC-R* and *SVBFG v. FDIC-C* cases. The FDIC-R1 has advised SVBFG that it would
7 view any such motion as premature (considering the already coordinated discovery) and
8 fundamentally inconsistent with SVBFG's filing two separate cases and waiting nearly a year to seek
9 consolidation.

10 By contrast, the FDIC-R1 submits that there is significant interest in judicial and party
11 economy in, at a minimum, coordinating discovery in the *SVBFG v. FDIC-R* and *FDIC-R v. Becker*
12 cases. Coordinating discovery would allow the officer and director defendants in the *FDIC-R v. Becker*
13 case to be deposed only once, in connection with the same conduct and events at issue in both cases.
14 Further consolidation, at least for pretrial purposes, may be appropriate as the cases progress to address
15 the possibility of conflicting factual determinations about the underlying conduct in the two cases.

16 The FDIC-R1 recognizes that there may be conflicting interests in scheduling the two cases
17 between SVBFG, on the one hand, and the officers and directors, on the other. The FDIC-R1 believes
18 both judicial and party economy favor coordinating discovery in these matters at the earliest
19 opportunity, which will necessitate developing an appropriate global schedule. The FDIC-R1 therefore
20 raises these considerations now, on a preliminary basis in this Administrative Motion, in the interests
21 of candor to the parties and the Court.

22 **IV. CONCLUSION**

23 For these reasons, FDIC-R1 respectfully requests that the Court order the *SVBFG v. FDIC-R*
24 and the *FDIC-R v. Becker* actions related, and to order such further proceedings as it deems appropriate
25 to resolve various issues of coordination, consolidation, and scheduling.

1 Dated: January 17, 2025

BAILEY & GLASSER, LLP

2 By: /s/ Stephen Sorensen

3 STEPHEN SORENSEN

4 *Counsel to the Federal Deposit Insurance*
5 *Corporation as Receiver for Silicon Valley Bank*

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was served on January 17, 2025 by filing with the Court's ECF system, which constitutes service on all parties having appeared in the above-captioned proceeding, and that copies of the foregoing also were served on the below in the manner indicated:

<i>By email and overnight delivery:</i>	<i>By messenger delivery:</i>
<p>James N. Kramer ORRICK The Orrick Building 405 Howard Street San Francisco, CA 94105-2669 Phone: (415) 773-5923 Email: jkramer@orrick.com <i>Counsel for Gregory Becker</i></p> <p>Darren LaVerne GIBSON DUNN 200 Park Avenue New York, NY 10166-0193 Phone: (212) 351-3936 Email: dlaverne@gibsondunn.com <i>Counsel for Daniel Beck</i></p> <p>Jamie A. Levitt MORRISON FOERSTER 250 West 55th Street New York, NY 10019-9601 Phone: (212) 468-8203 Email: jlevitt@mofo.com <i>Counsel for Marc Cadieux</i></p> <p>David Meister SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP One Manhattan West 395 9th Ave. New York, NY 10001 Phone: (212) 735-2100 Email: david.meister@skadden.com <i>Counsel for Laura Izurieta</i></p> <p>Christopher Garcia LATHAM & WATKINS 1271 Avenue of the Americas New York, NY 10020</p>	<p>Hon. Nathanael M. Cousins Robert F. Peckham Federal Building & United States Courthouse Office of the Clerk 280 South 1st Street San Jose, CA 95113</p>

Phone: (212) 906-1309
Email: christopher.garcia@lw.com
Counsel for Michael Kruse

Peter Spivak
HOGAN LOVELLS US LLP
555 Thirteenth Street NW
Washington DC 20004
Phone: (202) 637-5631
Email: peter.spivack@hoganlovells.com
Counsel for Michael Descheneaux

Phillip D. Anker
WILMERHALE
7 World Trade Center, 250 Greenwich Street
New York, NY 10007
Phone: (212) 230-8890
Email: philip.anker@wilmerhale.com
*Counsel for Eric Benhamou, Roger Dunbar,
Joel Friedman, Mary Miller, Kate Mitchell,
Beverly Matthews, Garen Staglin, Elizabeth
Burr, Richard Daniels, Alison Davis, and
Jeffrey Maggioncalda*

/s/ Elliott McGraw
Elliott McGraw